

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN GREGORY SMITH,

Plaintiff,

v.

Case No. 1:06-CV-800

Hon. Richard Alan Enslen

STATE OF MICHIGAN, *et al.*,

Defendants.

ORDER

Plaintiff John Gregory Smith, after having appealed the Judgment entered on February 1, 2007 dismissing his civil rights suit, has filed two Motions: (1) a Motion to Proceed *in Forma Pauperis* on Appeal; and, (2) a Motion for Reconsideration pursuant to Federal Rule of Civil Procedure 59(e). Oral argument is unnecessary as to either Motion.

Plaintiff's Motion to Proceed *in Forma Pauperis* on Appeal is supported by Plaintiff's sworn Financial Affidavit, which shows that he is indigent and currently lacks funds to pay the appellate filing fee and other expenses on appeal. The Motion is consistent with the requirements of Federal Rule of Appellate Procedure 24(a)(1) and will be granted.

Judgment was entered on February 1, 2007. The Motion for Reconsideration was filed on February 16, 2007. Although February 1, 2007 and the intervening weekends are excluded in computing the ten-day deadline under Rule 59(e), *see* Fed. R. App. P. 26(1)-(3), an additional extension for mailing is not granted under Federal Rule of Appellate Procedure 26(c). *See FHC Equities, L.L.C. v. MBL Life Assur. Corp.*, 188 F.3d 678, 682 (6th Cir. 1999) (citing cases). This means that this Motion for Reconsideration was filed on the 11th day, one day late. As such, the

Motion is denied as untimely and outside of the District Court's jurisdiction. *See* Fed. R. App. P. 4(a) (stating that appellate tolling provision depends upon the filing of a "timely" motion). Furthermore, were the Court to construe the present Motion as a request for a certification to the Court of Appeals that the District Court is inclined to grant relief under Federal Rule of Civil Procedure 60(b) upon remand, *see First Nat'l Bank v. Hirsch*, 535 F.2d 343, 346 (6th Cir.1976), the Court would nevertheless deny relief since the Motion does not show an entitlement to relief under either Rules 59(e) or 60(b).

THEREFORE, IT IS HEREBY ORDERED that Plaintiff John Gregory Smith's Motion to Proceed *in Forma Pauperis* on Appeal (Dkt. No. 24) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Reconsideration (Dkt. No. 23) is **DENIED** as untimely and without merit.

DATED in Kalamazoo, MI:
February 22, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE